

REMARKS

Claims 1-7 are pending in the present application.

The rejection of Claim 1 under 35 U.S.C. §112, first paragraph (written description – new matter), is respectfully traversed.

The Examiner continues to reject Claim 1 alleging that the added limitation does not have a basis in the original disclosure. In making this assertion, the Examiner states: “Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff’d mem.*, 738 F.2d 453 (Fed. Cir. 1984).”

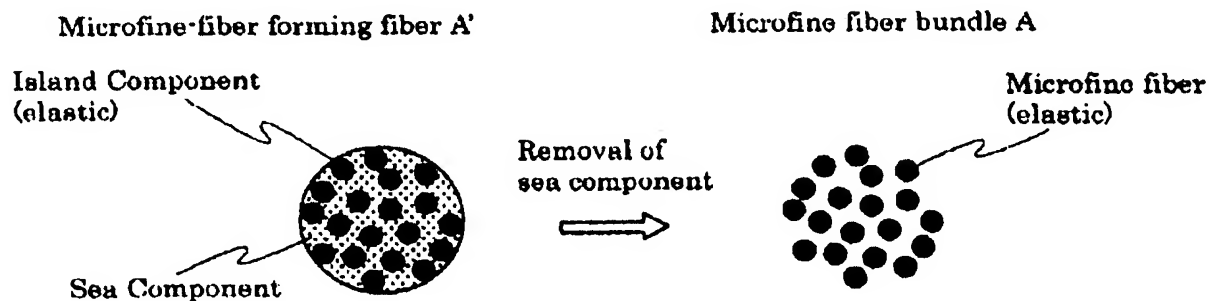
Applicants disagree with the Examiner's alleged lack of basis in the specification and remind the Examiner that the “lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support.” *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). Indeed, it is incumbent upon the Examiner to ascertain whether the negative limitation or proviso otherwise satisfies the written description requirement of 35 U.S.C. §112, first paragraph. Notably, the written description requirement may be met through an implicit disclosure.

Despite the arguments presented on April 21, 2008, which Applicants maintain, the Examiner continues to allege that the added limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or

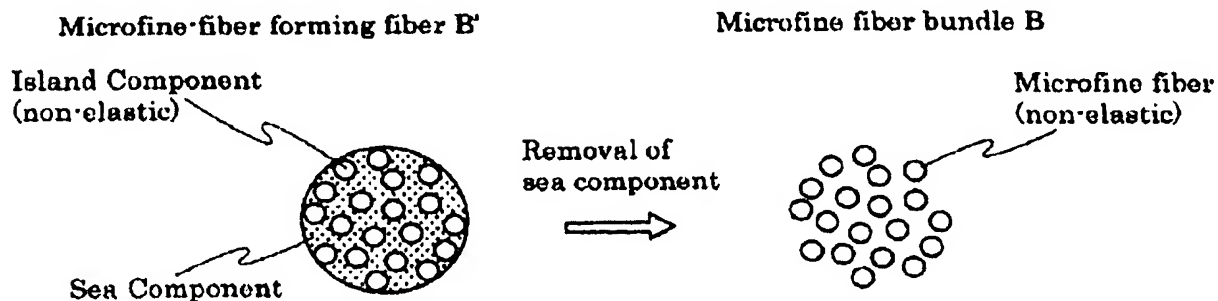
less and which are made of an elastic polymer having a JIS A hardness of 90 to 97” does not have a basis in the original disclosure. Applicants disagree and submit that the Examiner’s expressed opinion is contradictory to the actual teachings contained in the present application.

First, the production of the claimed leather-like sheet substance is schematically illustrated below with reference to Spinning Examples 1 and 5 and Example 1.

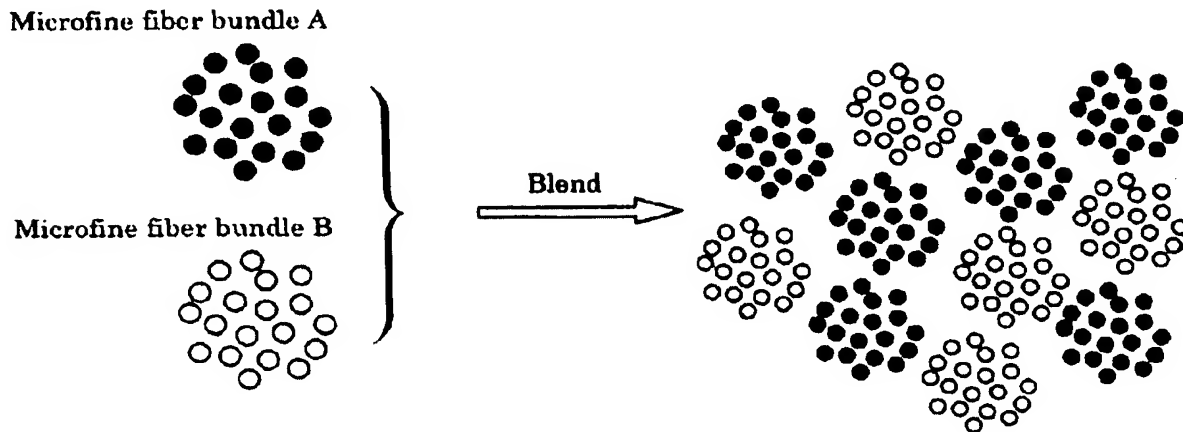
In Spinning Example 1 (see pages 22-23), the island component (polyurethane, elastic polymer) and the sea component (polyethylene) are spun into the microfine fiber-forming fibers A’, which are then made into the microfine fiber bundles A by removing the sea component:



In Spinning Example 5 (see page 24), the island component (nylon 6, non-elastic polymer) and the sea component (polyethylene) are spun to the microfine fiber-forming fibers B’, which are then made into the microfine fiber bundles B by removing the sea component:



In Example 1 (see pages 24-25), the microfine fiber bundles A and the microfine fiber bundles B obtained in Spinning Examples 1 and 5 are blended and finally made into the leather-like sheet substrate:



With the basic understanding provided by the above, Applicants submit the following with respect to the various incorrect allegations by the Examiner.

On page 13, lines 14-16, of the Office Action mailed August 13, 2008, the Examiner alleges:

Examiner maintains that the disclosure does not state that bundle (A) does not include fiber-forming fibers (B') and bundle (B) does not include fiber-forming fibers (A').

As is clearly evident from the foregoing illustrations, the microfine fiber bundle A cannot include the microfine fiber-forming fibers B', and the microfine fiber bundle B cannot include the microfine fiber-forming fibers A'. Thus, the foregoing allegation by the Examiner is incorrect and is inconsistent with the Examples of the present application.

On page 13, lines 16-18, of the Office Action mailed August 13, 2008, the Examiner alleges:

It is further noted that the examples provided in pages 22-30 also do not disclose the fiber forming fibers become bundles (A) and (B) where (A) does not include (B') and bundle (B) does not include (A').

It is clear from Spinning Example 1 that the island component for the microfine fiber-forming fibers A' is polyurethane (elastic polymer). Clearly, the island component does not contain the non-elastic polymer, and therefore, the resultant microfine fiber bundles A cannot include the non-elastic fibers. This is also true for Spinning Example 5. Again, the foregoing allegation by the Examiner is incorrect and is inconsistent with the Examples of the present application.

On page 14, lines 7-8, of the Office Action mailed August 13, 2008, the Examiner alleges:

Spinning examples 1-5 do not describe making bundles.

In Spinning Example 1, it is disclosed that the sea component was removed by extraction using toluene to convert the staples to microfine fibers. In the paragraph bridging pages 19 and 20 of the specification, it is disclosed that the microfine fiber-forming fibers A' are converted into microfine fiber bundles A by treating them with a liquid substance such as toluene. It would appear that the extraction of the sea component with toluene results in making bundles. In addition, Example 1 includes the disclosure that "the microfine fiber bundle derived from the microfine fiber-forming fiber of Spinning Example 1." Thus, Spinning Example 1 teaches making bundles. This is also true for Spinning Example 5. Again, the foregoing allegation by the Examiner is incorrect and is inconsistent with the Examples of the present application.

On page 14, lines 8-10, of the Office Action mailed August 13, 2008, the Examiner alleges:

As the Example describes blending the spinning samples of 1 and 5, which are equated with elastic and nonelastic fibers it is not clear if the fibers are blended or the bundles are blended.

As indicated above, the spinning samples of 1 and 5 are microfine fiber bundles A and B, and not the unbundled elastic and nonelastic fibers as alleged by the Examiner.

Accordingly, the foregoing allegation by the Examiner is incorrect and is inconsistent with the Examples of the present application.

On page 14, lines 12-14, of the Office Action mailed August 13, 2008, the Examiner alleges:

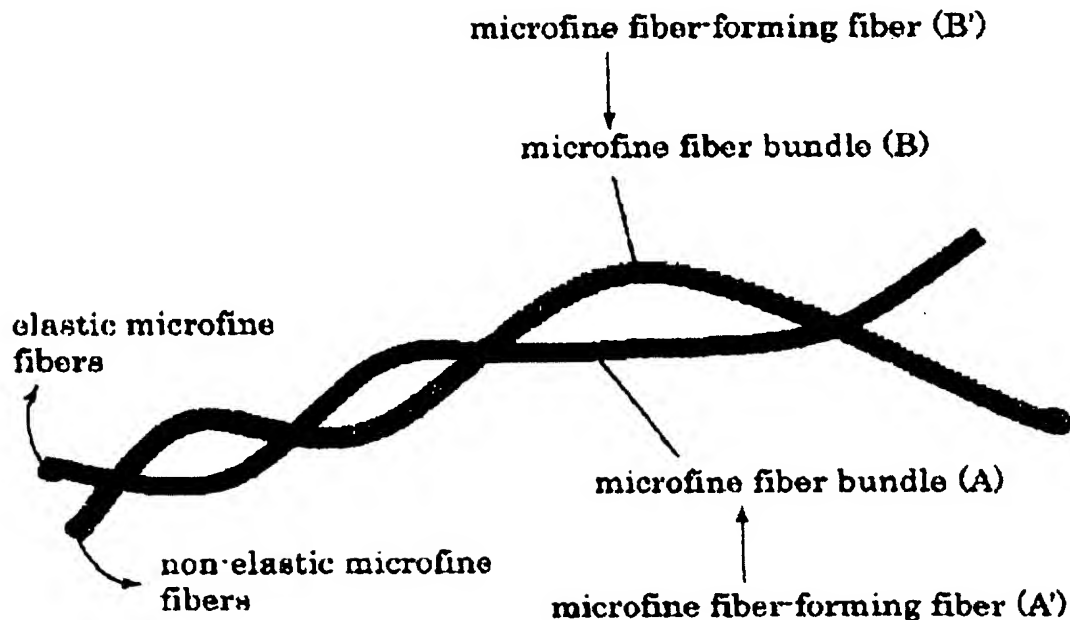
[T]he specification does not disclose this critical step of forming the elastic fiber-forming fibers into bundles before blending with the nonelastic fiber-forming fibers.

In Spinning Example 1, as seen from the above schematic illustration, the microfine fiber-forming fibers A' are formed into the bundles before blending with the microfine fiber-forming fibers B' or the microfine fiber bundles B. Accordingly, the foregoing allegation by the Examiner is incorrect and is inconsistent with the Examples of the present application.

On page 14, lines 13-18, of the Office Action mailed August 13, 2008, the Examiner alleges:

Applicant provides a drawing to further understand Applicant's arguments, where the left hand side of the drawing indicates elastic microfine fibers and non-elastic microfine fibers. On the right side of the drawing the same lines that are indicated as elastic microfine fibers is now called a microfine fiber bundle (A). The drawing serves to equate bundle with fiber.

For sake of convenience, the drawing the Examiner references is reproduced below:



As illustrated above, a single microfibrillar fiber bundle A includes plural elastic microfibrillar fibers. The plural elastic microfibrillar fibers are exposed to the left-hand cross-section and indicated by "elastic microfibrillar fibers." The plural elastic microfibrillar fibers are bundled to form a single microfibrillar fiber bundle (A) as indicated in the above drawing. Contrary to the Examiner's allegation, the drawing is clear in that the bundle is not equated with fiber but the bundles includes plural fibers.

On page 14, lines 17-19, of the Office Action mailed August 13, 2008, the Examiner alleges:

The drawing serves to equate bundle with fiber. This is contrary to the arguments shown on page 8 where bundles comprise more than 1 fiber.

As noted above, since the drawing clearly shows that each bundle includes plural fibers, the Examiner's allegation is without merit.

Applicants submit that contrary to the Examiner's alleged position, the skilled artisan would reasonably and readily recognize that the specification clearly discloses, as discussed

above (and further emphasized in the remarks with respect to Nakayama et al below), the limitation added to the pending Claim 1. Specifically, the specification properly provides support for the negative limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97”.

In the Advisory Action mailed February 6, 2009, the Examiner states:

[T]he specification is written to state that Spinning Example 1 is formed from polyurethane as the island component and polyethylene as the sea component are spun into a microfine fiber-forming fiber. Spinning Example 1 does not equate this microfine fiber-forming fiber to the microfine fiber bundle (A) as recited in Claim 1.

* * *

[T]he specification is not clear that spinning example 1 is microfine fiber bundle (A) and therefore the embodiment of Example 1.

As indicated above, the Examiner’s position is based on several misunderstandings, which are repeated in the Advisory Action mailed February 6, 2009.

The microfine fiber bundle (A) is formed by removing the sea component from a microfine fiber-forming fiber. Therefore, the microfine fiber-forming fiber cannot be equated to the microfine fiber bundle (A).

In Spinning Example 1, polyurethane (island component) and polyethylene (sea component) are spun into a microfine fiber-forming fiber which is referred to as a microfine fiber-forming fiber (A’) in claim 7, etc. Then, the microfine fiber-forming fiber is made into microfine fibers by removing the sea component. The microfine fibers obtained in Spinning Example 1 are referred to as "microfine fiber bundle" in Example 1. Thus, it would appear that Spinning Example 1 is microfine fiber bundle (A), and the specification does clearly describe the invention as claimed.

The Examiner further states:

Claim 1 also describes “the microfine fiber bundle (A) “comprising” 10 to 100 microfine fibers ... which are made of an elastic polymer.” Comprising is not exclusive of other types of fibers and therefore applicant's arguments not commensurate with the scope of the claims.

However, this allegation by the Examiner is inconsistent with the limitation in Claim 1 that states: “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97”. This limitation excludes at least fibers of non-elastic polymer in the manner in which the Examiner alleges they would be included.

Accordingly, for the reasons presented in the response filed on December 15, 2008, and further expanded upon in the remarks herein, Applicants request withdrawal of this ground of rejection.

The rejections of: (a) Claims 1 and 6 under 35 U.S.C. §102(e) over Nakayama et al - US (U.S. 6,767,853), (b) Claims 1 and 6 under 35 U.S.C. §102(b) over Nakayama et al - EP (EP 1067234); (c) Claim 6 under 35 U.S.C. §102(b) over Nakayama et al - EP (EP 1067234); and (d) Claims 1 and 6 under 35 U.S.C. §103(a) over Nakayama et al - EP (EP 1067234), are traversed.

Again, Applicants note that Nakayama et al – EP is the European counterpart to Nakayama et al – US. Therefore, these references suffer the same deficiencies with respect to the claimed invention, which are highlighted below.

Claim 1 of the present invention is drawn to

A leather-like sheet substrate comprising a fiber-entangled nonwoven fabric that comprises a microfine fiber bundle (A) and a microfine fiber bundle (B) in a blending ratio (A)/(B) of 30/70 to 70/30 by mass and a

polymeric elastomer contained in the fiber-entangled nonwoven fabric, the microfine fiber bundle (A) comprising 10 to 100 microfine fibers each of which has a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97, and the microfine fiber bundle (B) comprising a microfine fiber which has a single fiber fineness of 0.5 dtex or less and which is made of a non-elastic polymer, wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97.

For the reasons set forth above and incorporated herein by reference, Applicants submit that the limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97” is supported by the specification and distinguishes the claimed invention from the disclosure of Nakayama et al – EP and Nakayama et al – US.

In paragraph 8 on page 15, of the Office Action mailed August 13, 2008, the Examiner alleges:

Examiner maintains that the specification as disclosed does not teach the A does not contain Band B does not contain A.

Contrary to the position taken by the Examiner, as noted above, the microfine fiber bundle A of Spinning Example 1 does not contain the non-elastic microfine fibers. The microfine fiber bundle B of Spinning Example 5 does not contain the elastic microfine fibers. Accordingly, the foregoing allegation by the Examiner is incorrect and is inconsistent with the Examples of the present application.

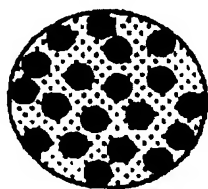
Yet, in paragraph 8 on page 15, of the Office Action mailed August 13, 2008, the Examiner further alleges:

Applicant's specification teaches A' fiber-forming fibers and B' fiber-forming fibers and teaches these fibers can be blended. The link between an exclusive bundle of A' and exclusive bundle of B' is not in the disclosure such that one of ordinary skill in the art can make the invention.

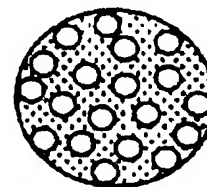
The present specification does not include the words, bundle of A' and bundle of B'. Thus, it appears that the Examiner intended to refer to the bundle A and the bundle B.

To this end, Applicants again submit that from the text of Claim 1 it is clear that the claimed leather-like sheet substrate is composed of *two kinds* of fiber bundles: the elastic fiber bundle (A) made of elastic microfine fibers and the non-elastic fiber bundle (B) made of non-elastic microfine fibers. The elastic fiber bundle A is formed from the microfine fiber-forming fiber A' which contains an elastic polymer as the island component (page 16, lines 9-12). The non-elastic fiber bundle B is formed from the microfine fiber-forming fiber B' which contains a non-elastic polymer as the island component (page 16, lines 26-27). Therefore, the claimed elastic fiber bundle (A) and non-elastic fiber bundle (B) could be illustrated as follows:

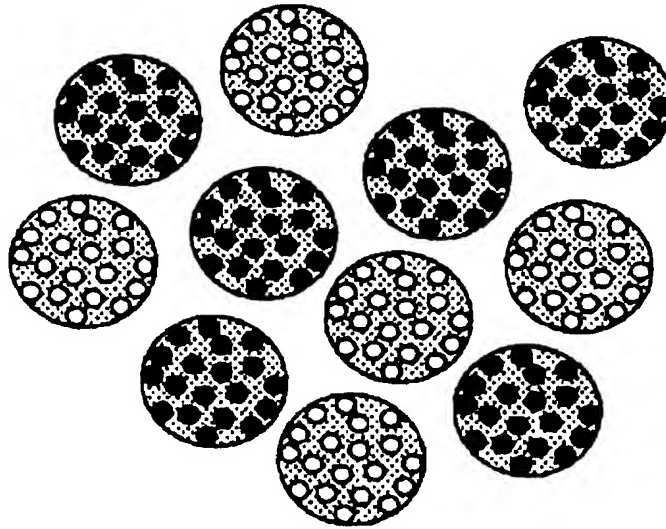
Microfine-fiber forming fiber A'



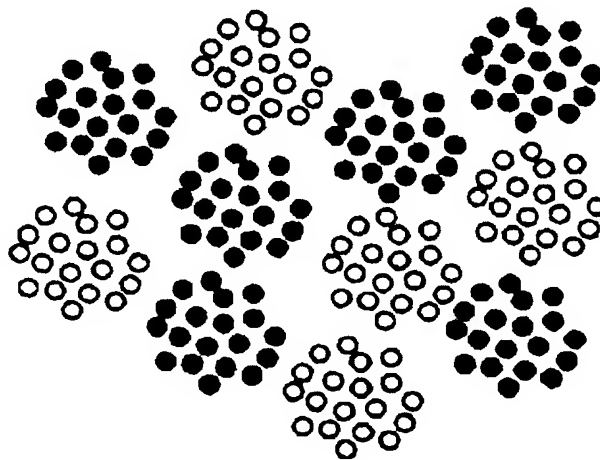
Microfine-fiber forming fiber B'



By blending the microfne fiber-forming fibers A' and B', the following structure is obtained, in which A' does not contain B' and B' does not contain A'.



Then, the sea component of the microfibrillar-forming fibers A' and B' are removed to obtain the following structure of a mixture of the microfibrillar bundles A and the microfibrillar bundles B, in which the bundle A does not contain the non-elastic microfibrillar fibers and the bundle B does not contain the elastic microfibrillar fibers.



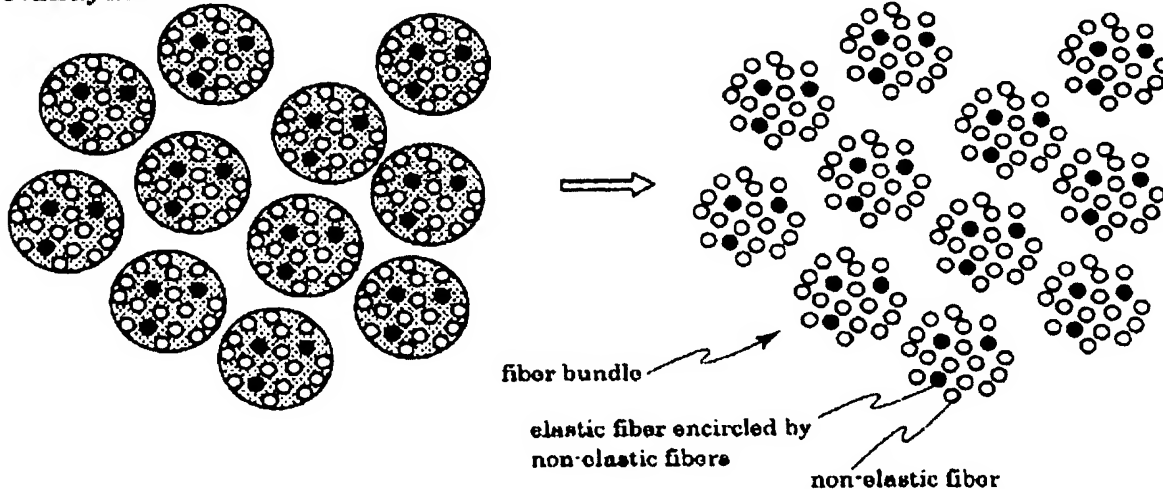
From the foregoing, Applicants submit that the Examiner's concluding sentence in paragraph 8 on page 15, of the Office Action mailed August 13, 2008, is incorrect.

In paragraph 9 on page 15, of the Office Action mailed August 13, 2008, the Examiner alleges:

As disclosed, the current Applicant does not clearly differentiate that the fiber bundles do not contain a mixture of A and B

In view of the foregoing, Applicants submit that the specification is clear in that the bundles do not contain a mixture of A and B and are well distinguished from the fiber bundles disclosed in Nakayama et al – EP and Nakayama et al – US. In contrast to the claimed invention, *each fiber bundle* of disclosed in Nakayama et al – EP and Nakayama et al – US is composed of elastic fibers A *and* non-elastic fibers B, in which each elastic fiber A is encircled by the non-elastic fibers B (column 3, lines 28-45; column 4, lines 7-9; etc.). Therefore, the fiber bundle disclosed in Nakayama et al – EP and Nakayama et al – US could be illustrated more succinctly as follows:

Nakayama et al.



Indeed, the fiber bundle disclosed in Nakayama et al – EP and Nakayama et al – US is formed from a microfibrillar fiber-forming fiber which contains both an elastic polymer and a non-elastic polymer (Example 1, etc.). Therefore, a single fiber bundle disclosed in Nakayama et al – EP and Nakayama et al – US contains both the elastic microfibrillar fibers and the non-elastic microfibrillar fibers. In fact, in each fiber bundle of disclosed in Nakayama et al – EP and Nakayama et al – US, each elastic fiber A is required to be encircled by the non-

elastic fibers B. Again, the Examiner is reminded that in the presently claimed invention each elastic fiber is encircled by other elastic fibers in each of the claimed elastic fiber bundles (A).

In paragraph 9 on page 15, of the Office Action mailed August 13, 2008, the Examiner further alleges:

The link between an exclusive bundle A' and exclusive bundle of B' is not in the disclosure such that one of ordinary skill in the art can make the invention

Clearly, as indicated above, this allegation is incorrect.

Applicants again submit that the claimed invention is clearly distinct from the disclosure of Nakayama et al – EP and Nakayama et al – US at least in view of the structural differences in the fiber bundles. The Examiner recognizes as much stating “Examiner agrees that the fiber bundles of Nakayama comprise both microfine fiber A and microfine fiber B as stated in claim 1 of Nakayama” (see page 8, lines 7-8 of the Office Action mailed June 4, 2007). Therefore, for the reasons give above which are recognized by the Examiner, neither Nakayama et al – EP nor Nakayama et al – US can anticipate the claimed invention as these references fail to disclose all the limitations of the claimed invention.

In the advisory Action mailed February 6, 2009, the Examiner further states:

Claim 1 also describes “the microfine fiber bundle (A) “comprising” 10 to 100 microfine fibers ... which are made of an elastic polymer.” Comprising is not exclusive of other types of fibers and therefore applicant's arguments not commensurate with the scope of the claims.

However, this allegation by the Examiner is inconsistent with the limitation in Claim 1 that states: “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic

polymer having a JIS A hardness of 90 to 97". This limitation excludes at least fibers of non-elastic polymer in the manner in which the Examiner alleges they would be included.

Accordingly, for the reasons presented in the response filed on December 15, 2008, and further expanded upon in the remarks herein, Applicants again request withdrawal of the rejections over the disclosures of Nakayama et al – EP and Nakayama et al – US.

The rejections of: (a) Claim 3 over Nakayama et al - EP (EP 1067234) in view of Minami et al, (b) Claim 3 over Nakayama et al - EP (EP 1067234) in view of Kato et al (US 4,476,186), and (c) Claims 2, 4, and 5 under 35 U.S.C. §103(a) over Nakayama et al - EP (EP 1067234) in view of Kato et al (US 4,476,186) each under 35 U.S.C. §103(a) are respectfully traversed.

As discussed above, the present invention and Nakayama et al - EP (EP 1067234) are clearly distinguished from each other at least in the structures of fiber bundles. The Examiner cites Minami et al and Kato et al as showing the incorporation of powder into the entangled nonwoven substrate is known. Applicants make no statement with respect to the alleged disclosures of Minami et al and Kato et al, but note that each of these references is completely silent about the specifically claimed elastic fiber bundle (A) and non-elastic fiber bundle (B) described above. As such, Minami et al and Kato et al fail to remedy the basic deficiency of Nakayama et al - EP (EP 1067234). Therefore, even if the skilled artisan were to combine the disclosure of Nakayama et al - EP (EP 1067234) with either Minami et al or Kato et al the present invention would still not be apparent or obvious.

On page 16, lines 3-7, of the Office Action mailed August 13, 2008, the Examiner alleges:

Applicant presents the structure of Nakayama and the structure of the present Application in the diagrams. Examiner notes that these

diagrams are not disclosed in Nakayama nor the current application and Examiner is relying on the claims and specification as disclosed and the disclosure of the prior art.

Applicants submit that this allegation by the Examiner is without merit as the diagrams need not be presented in the application or Nakayama et al. Certainly, there is no authority that would support such an assertion by the Examiner and, indeed, none is offered.

Applicants submit that it is not relevant whether or not the diagrams are explicitly disclosed. What does matter is that the diagrams correctly reflect the teachings of the present invention and the disclosures of Nakayama et al. Applicants submit that the diagrams illustrated above correctly express the basic features of the claimed microfine fiber-forming fibers A' and B' and the claimed microfine fiber bundles A and B. The diagrams illustrated above also correctly express the basic features of the microfine fiber bundles of disclosed by Nakayama et al at, for example, column 3, lines 28-34 of Nakayama et al - US.

Again, Applicants submit that Minami et al and Kato et al do not remedy the basic deficiency of Nakayama et al - EP or even Nakayama et al - US.

In view of the foregoing, Applicants request withdrawal of these grounds of rejection.

The rejection of Claims 1, 2, and 4-6 under the doctrine of obviousness-type double patenting over Claim 1 and 15 of Nakayama et al - US (U.S. 6,767,853) is respectfully traversed.

Applicants refer the Examiner to the discussion above with respect to the differences in the structure defined in the leather-like sheet substrate of the claimed invention and the fibrous substrate defined in Nakayama et al – US. Applicants contend that when the claims and the support offered in the present specification for the limitation “wherein microfine fiber bundle (A) does not contain microfine fibers made of non-elastic polymers and that microfine

fiber bundle (B) does not contain microfine fibers which have a single fiber fineness of 0.5 dtex or less and which are made of an elastic polymer having a JIS A hardness of 90 to 97” is properly considered, the claimed invention is clearly distinct from that disclosed and claimed in Nakayama et al – US.

In paragraph 11 on page 16, of the Office Action mailed August 13, 2008, the Examiner alleges:

As noted above, while the diagrams presented in Applicant’s arguments shown two different structures, the Applicant’s specification does not support this disclosure...

The Examiner is reminded that the diagrams are presented to visualize the features of the claimed microfine fiber-forming fibers A’ and B’ and the claimed microfine fiber bundles A and B. For the reasons given throughout the discussion above, these diagrams and the claims which they illustrate find full support in the specification as filed. Accordingly, for the reasons given above in traversal of the anticipation rejection over Nakayama et al – US, the claimed invention is not anticipated by or obvious in view of the claims of Nakayama et al – US.

In view of the foregoing, Applicants submit that this ground of rejection should be withdrawn. Acknowledgement to this effect is requested.

Finally, with respect to the non-elected method claims, Applicants remind the Examiner of MPEP §821.04. Accordingly, upon a finding of allowability of the elected product claims, Applicants respectfully request rejoinder of the withdrawn process claims that depend therefrom.

Finally, Applicants wish to thank Examiner Steele for the helpful discussion on January 21, 2009. During this discussion, the Examiner clarified the status of this application and agree to reissue the Advisory Action addressing all outstanding issues.

Applicants submit that the present application is now in condition for allowance. Early notification of such action is earnestly solicited.

Respectfully submitted,

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